

PATENT  
Attorney Docket No. 101.0044-04000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: )  
Gary Karlin Michelson )  
Serial No.: 09/605,001 )  
Filed: June 27, 2000 )  
For: APPARATUS AND METHOD OF )  
INSERTING SPINAL IMPLANTS )

Confirmation No.: 5171  
Group Art Unit: 3772  
Examiner: Michael A. Brown

FEB 02 2007

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE ACTION**

In reply to the Office Action of January 17, 2007, the following remarks are submitted:

The Examiner rejected claims 105-107 and 120 under 35 U.S.C. § 102(b) based on U.S. Patent No. 3,486,505 to Morrison ("Morrison"), and rejected claims 125 and 126 under 35 U.S.C. § 102(b) based on U.S. Patent No. 5,431,658 to Moskovich ("Moskovich"). According to the MPEP § 706.02, "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly." As discussed below, neither Morrison nor Moskovich teach every limitation of the instant invention as claimed in claims 105-107, 120, 125 and 126. As such, Applicant respectfully traverses the Examiner's rejections based on 35 U.S.C. § 102(b).

Independent claim 105 recites a method for performing a surgical procedure using a surgical retractor with two spaced apart retractor arms, where "the first supporting surface of each retractor arm engages one vertebrae and the second supporting surface of each retractor arm engages the other vertebrae." Furthermore, independent claim 120 recites a surgical retractor for use in distracting adjacent vertebrae with first and second retractor arms, where "each retractor arm [defines] a first vertebra supporting surface and a second vertebra supporting surface." However, Morrison does not teach two retractor arms, where each arm has a first surface for contacting or supporting one vertebrae and a second surface for contacting or

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Reply to Office Action of September 17, 2007

supporting another vertebrae. As such, Morrison does not anticipate independent claims 105 and 120, and applicant submits the rejection thereof under 35 U.S.C. § 102(b) based on Morrison has been overcome.

Independent claim 125 recites method for performing a surgical procedure using a surgical retractor, where the surgical retractor includes "an elongate hollow member." However, Moskovich does not teach a surgical retractor having an elongate hollow member. As such, Moskovich does not anticipate independent claim 125, and applicant submits the rejection thereof under 35 U.S.C § 102(b) based on Moskovich has been overcome.

In conclusion, Applicant submits that independent claims 105, 120, and 125 are patentable and that dependent claims 106, 107, and 126 dependent from claims 105 or 125 are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the above-discussed claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,  
MARTIN & FERRARO, LLP

Dated: February 2, 2007

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